
SENATE BILL No. 271

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-14; IC 30-2-13-23; IC 36-2-14.

Synopsis: Next of kin control of bodies in murder cases. Prohibits a person who is arrested for one of certain specified crimes in connection with a death from making certain determinations concerning the remains of the victim of the apparent crime for which the person was arrested. Requires the coroner, in consultation with law enforcement, to notify a cemetery owner, a crematory authority, or a seller of prepaid funeral and burial services that the person is barred from making the determinations concerning the remains because of the person's arrest. Specifies the order of priority among individuals permitted to authorize the interment, entombment, or inurnment of the body or cremated remains of a deceased human. Provides that, when a coroner investigates a death, the coroner may hold the remains of the decedent until the investigation is concluded. Permits the parent or adult child of a decedent to receive a full autopsy report and, with certain exceptions, prohibits the parent or adult child from publicly disclosing the contents of the full autopsy report. (The introduced version of this bill was prepared by the interim study committee on criminal justice matters.)

Effective: July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 271

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-14-31-26 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) **Except as**
3 **provided in subsection (c)**, the following persons, in the priority listed,
4 have the right to serve as an authorizing agent:

5 (1) The individual who was the spouse of the decedent at the time
6 of the decedent's death.

7 (2) The decedent's surviving adult children. If more than one (1)
8 adult child is surviving, any adult child who confirms in writing
9 that the other adult children have been notified, unless the
10 crematory authority receives a written objection to the cremation
11 from another adult child.

12 (3) The decedent's surviving parent. If the decedent is survived by
13 both parents, either parent may serve as the authorizing agent
14 unless the crematory authority receives a written objection to the
15 cremation from the other parent.

16 (4) The individual in the next degree of kinship under IC 29-1-2-1
17 to inherit the estate of the decedent. If more than one (1)



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individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.

(5) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through (4) of this section are available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

(6) In the absence of any person under subdivisions (1) through (5), any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

(C) voluntary manslaughter (IC 35-42-1-3);

(D) involuntary manslaughter if the killing does not result from the operation of a vehicle (IC 35-42-1-4);

(E) battery resulting in the death of a child less than fourteen (14) years of age (IC 35-42-2-1(a)(5)); or

(F) neglect of a dependent (IC 35-46-1-4); and

(2) a person described in subsection (a) has been arrested in connection with the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the arrest of the person referred to in

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subsection (c)(2).

SECTION 2. IC 23-14-55-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) **Except as provided in subsection (d)**, the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes **either of the following**:

(1) To be (in the priority listed) the **following**:

(A) ~~surviving spouse; or~~

(B) ~~surviving child; parent; or next of kin;~~
of the decedent; or

(A) **The individual who was the spouse of the decedent at the time of the decedent's death.**

(B) **The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the owner of the cemetery receives a written objection to the disposition from another adult child.**

(C) **The decedent's surviving parent. If the decedent is survived by both parents, either parent may serve as the authorizing agent unless the cemetery owner receives a written objection to the disposition from the other parent.**

(D) **The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree of kinship is surviving, any person of that degree may serve as the authorizing agent unless the cemetery owner receives a written objection to the disposition from one (1) or more persons of the same degree of kinship.**

(2) To have acquired the right to control the disposition of the deceased human body or cremated remains.

~~but~~ **The owner of a cemetery may accept the authorization of an individual** only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, **are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (d)**, or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) A cemetery owner is not liable in any action for making an interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice

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that the representation made under subsection (a) by the individual who issued the written authorization was untrue.

(c) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(d) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

(C) voluntary manslaughter (IC 35-42-1-3);

(D) involuntary manslaughter if the killing does not result from the operation of a vehicle (IC 35-42-1-4);

(E) battery resulting in the death of a child less than fourteen (14) years of age (IC 35-42-2-1(a)(5)); or

(F) neglect of a dependent (IC 35-46-1-4); and

(2) a person described in subsection (a) has been arrested in connection with the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(e) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the arrest of a person referred to in subsection (d)(2).

SECTION 3. IC 30-2-13-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 23. **(a)** A contract is invalid if the contract allows the purchaser the right to:

(1) convert, substitute, or exchange the purchase of burial rights for the purchase of services or merchandise;

(2) free services or merchandise in exchange for the purchase of other services or merchandise; or

(3) receive cash or gifts, other than burial rights and services and merchandise, with a value of more than fifty dollars (\$50) as an inducement to purchase a contract.

(b) A contract is unenforceable if:

(1) the contract obligates the seller to provide prepaid services or merchandise for a named individual in conjunction with the death, burial, or final disposition of the individual;

(2) the purchaser under the contract is described in section 9(b)(4) of this chapter;

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(3) the death of the named individual appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

(C) voluntary manslaughter (IC 35-42-1-3);

(D) involuntary manslaughter if the killing does not result from the operation of a vehicle (IC 35-42-1-4);

(E) battery resulting in the death of a child less than fourteen (14) years of age (IC 35-42-2-1(a)(5)); or

(F) neglect of a dependent (IC 35-46-1-4); and

(4) the purchaser referred to in subdivision (2) has been arrested in connection with the offense.

The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the seller of the arrest of the purchaser described in subdivision (4).

SECTION 4. IC 36-2-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Whenever the coroner is notified that a person in the county:

(1) has died from violence;

(2) has died by casualty;

(3) has died when apparently in good health;

(4) has died in an apparently suspicious, unusual, or unnatural manner; or

(5) has been found dead;

~~he~~ **the coroner** shall, before the scene of the death is disturbed, notify a law enforcement agency having jurisdiction in that area. The agency shall assist the coroner in conducting an investigation of how the person died and a medical investigation of the cause of death. **The coroner may hold the remains of the decedent until the investigation of how the person died and the medical investigation of the cause of death are concluded.**

(b) The coroner shall file with the person in charge of interment a coroner's certificate of death within seventy-two (72) hours after being notified of the death. If the cause of death is not established with reasonable certainty within seventy-two (72) hours, the coroner shall file with the person in charge of interment a coroner's certificate of death, with the cause of death designated as "deferred pending further action". As soon as ~~he~~ **the coroner** determines the cause of death, the coroner shall file a supplemental report indicating ~~his~~ **the** exact findings with the local health officer having jurisdiction, who shall make it part of ~~his~~ **the** official records.

(c) If this section applies, the body and the scene of death may not

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be disturbed until the coroner has photographed them in the manner that most fully discloses how the person died. However, a coroner or law enforcement officer may order a body to be moved before photographs are taken if the position or location of the body unduly interferes with activities carried on where the body is found, but the body may not be moved from the immediate area and must be moved without substantially destroying or altering the evidence present.

(d) When acting under this section, if the coroner considers it necessary to have an autopsy performed, is required to perform an autopsy under subsection (f), or is requested by the prosecuting attorney of the county to perform an autopsy, the coroner shall employ a physician:

- (1) certified by the American board of pathology; or
- (2) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American board of pathology;

to perform the autopsy. The physician performing the autopsy shall be paid a fee of at least fifty dollars (\$50) from the county treasury. A coroner may employ the services of the medical examiner system, provided for in IC 4-23-6-6, when an autopsy is required, as long as this subsection is met.

(e) If:

- (1) at the request of:

- (A) the decedent's spouse;
- (B) a child of the decedent, if the decedent does not have a spouse;
- (C) a parent of the decedent, if the decedent does not have a spouse or children;
- (D) a brother or sister of the decedent, if the decedent does not have a spouse, children, or parents; or
- (E) a grandparent of the decedent, if the decedent does not have a spouse, children, parents, brothers, or sisters;

- (2) in any death, where two (2) or more witnesses who corroborate the circumstances surrounding death are present; and
- (3) two (2) physicians who are licensed to practice medicine in the state and who have made separate examinations of the decedent certify the same cause of death in an affidavit within twenty-four (24) hours after death;

an autopsy need not be performed. The affidavits shall be filed with the circuit court clerk.

(f) A county coroner may not certify the cause of death in the case of the sudden and unexpected death of a child who is at least one (1)

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1 week old and not more than three (3) years old unless an autopsy is
 2 performed at county expense. However, a coroner may certify the cause
 3 of death of a child described in this subsection without the performance
 4 of an autopsy if subsection (e) applies to the death of the child.

5 **(g) After consultation with the law enforcement agency**
 6 **investigating the death of a decedent, the coroner shall do the**
 7 **following:**

8 **(1) Inform a crematory authority if a person is barred under**
 9 **IC 23-14-31-26(c) from serving as the authorizing agent with**
 10 **respect to the cremation of the decedent's body because the**
 11 **person has been arrested for a crime set forth in**
 12 **IC 23-14-31-26(c)(1) in connection with the death of the**
 13 **decedent.**

14 **(2) Inform a cemetery owner if a person is barred under**
 15 **IC 23-14-55-2(d) from authorizing the disposition of the body**
 16 **or cremated remains of the decedent because the person has**
 17 **been arrested for a crime set forth in IC 23-14-55-2(d)(1) in**
 18 **connection with the death of the decedent.**

19 **(3) Inform a seller of prepaid services or merchandise if a**
 20 **person's contract is unenforceable under IC 30-2-13-23(b)**
 21 **because the person has been arrested for a crime set forth in**
 22 **IC 23-14-55-2(b)(3) in connection with the death of the**
 23 **decedent.**

24 SECTION 5. IC 36-2-14-18, AS AMENDED BY P.L.141-2006,
 25 SECTION 113, IS AMENDED TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) Notwithstanding
 27 IC 5-14-3-4(b)(1), when a coroner investigates a death, the office of the
 28 coroner is required to make available for public inspection and copying
 29 the following:

- 30 (1) The name, age, address, sex, and race of the deceased.
 31 (2) The address where the dead body was found, or if there is no
 32 address the location where the dead body was found and, if
 33 different, the address where the death occurred, or if there is no
 34 address the location where the death occurred.
 35 (3) The name of the agency to which the death was reported and
 36 the name of the person reporting the death.
 37 (4) The name of any public official or governmental employee
 38 present at the scene of the death and the name of the person
 39 certifying or pronouncing the death.
 40 (5) Information regarding an autopsy (requested or performed)
 41 limited to the date, the person who performed the autopsy, where
 42 the autopsy was performed, and a conclusion as to:

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- (A) the probable cause of death;
- (B) the probable manner of death; and
- (C) the probable mechanism of death.

(6) The location to which the body was removed, the person determining the location to which the body was removed, and the authority under which the decision to remove the body was made.

(7) The records required to be filed by a coroner under section 6 of this chapter and the verdict and the written report required under section 10 of this chapter.

(b) A county coroner or a coroner's deputy who receives an investigatory record from a law enforcement agency shall treat the investigatory record with the same confidentiality as the law enforcement agency would treat the investigatory record.

(c) Notwithstanding any other provision of this section, a coroner shall make available a full copy of an autopsy report, other than a photograph, video recording, or audio recording of the autopsy, upon the written request of ~~the~~ **a parent of the decedent, an adult child of the decedent, a next of kin of the decedent, or of an insurance company investigating a claim arising from the death of the individual upon whom the autopsy was performed. The A parent of the decedent, an adult child of the decedent, a next of kin of the decedent, and an insurance company is are** prohibited from publicly disclosing any information contained in the report beyond that information that may otherwise be disclosed by a coroner under this section. This prohibition does not apply to information disclosed in communications in conjunction with the investigation, settlement, or payment of the claim.

(d) Notwithstanding any other provision of this section, a coroner shall make available a full copy of an autopsy report, other than a photograph, video recording, or audio recording of the autopsy, upon the written request of:

- (1) the director of the division of disability and rehabilitative services established by IC 12-9-1-1;
- (2) the director of the division of mental health and addiction established by IC 12-21-1-1; or
- (3) the director of the division of aging established by IC 12-9.1-1-1;

in connection with a division's review of the circumstances surrounding the death of an individual who received services from a division or through a division at the time of the individual's death.

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